

REMARKS

Applicant has cancelled claims 11-23 to focus the application on particular aspects of the invention as recited in claims 1-10. More particularly, applicant has amended independent claim 1 to include the features recited in claim 11 and 12 (now cancelled). In essence, the combination of the claims 1, 11 and 12 represents the sole independent claim pending in the application. Applicant may consider filing a continuation application to pursue the cancelled claims in a future application.

Applicant has amended claim 4 to address the Examiner's § 112, second paragraph rejection. Applicant has also corrected the informalities in the specification and provided amended drawings for FIG. 1 and FIG. 4. In particular, applicant has changed the reference character 26 to 27 and identified the upper 13 in FIG. 1, and correctly identified the cross pieces 55 in FIG. 4.

35 U.S.C. § 102 (b)

The Examiner rejected claims 13-14, 16-19, 21, and 23 as being anticipated by US 5,701,688 to Crowley. Since applicant has cancelled these claims, the anticipation rejection based on Crowley is rendered moot.

35 U.S.C. § 103

The Examiner rejected claims 1-10 as being unpatentable over Crowley in view of the German reference, Schabsky 1,103,811. The Examiner acknowledges that Crowley does not disclose a steel toe, but cites Schabsky as teaching this feature. The Examiner argues that one skilled in the art would be motivated to modify Crowley's shoe to include Schabsky's steel toe "to protect the entire top area of the user's foot from any articles that may be dropped upon it" (office action, paper no. 3, page 4).

As stated above, applicant has amended claim 1 to include the features recited in claims 11-12 including the attachment of the instep guard with the toe portion of the steel toe. Applicant submits that neither Crowley nor Schabsky, separately or in combination, discloses the features recited in the amended claim 1, namely, an instep guard positioned between the instep

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Serial No. : 09/686,546  
Filed : October 11, 2000  
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portion and the liner, with the instep guard extending from the distal to the proximal region of the vamp which is attached to the toe portion of the steel toe.

In particular, we submit that one of skill in that art would not modify Crowley's shoe with Schabsky's steel toe in the manner suggested by the Examiner. Crowley describes a shoe lace protector which is intended, not to protect the metatarsal area of the foot positioned within the footwear from injury due to heavy or blunt forces, but to cover the shoelaces on the outside of the shoe mainly for aesthetic purposes. Thus, the shoelace cover must be positioned on the outside of the shoe as required by its intended design as well as the claims in Crowley. On the other hand, as amended, claim 1 recites that the instep guard be positioned between the instep portion and the liner, i.e., within or inside the vamp of the footwear. In summary, nothing in either Crowley or Schabsky describes or suggests, either alone or in combination, a footwear having the features as now recited in amended claim 1.

Because claims 2-10 depend from claim 1, applicant submits that these dependent claims are patentable for at least the same reasons that independent claim 1 is patentable.

Attached is a marked-up version of the changes being made by the current amendment.

Applicant asks that all claims be allowed. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: December 12, 2001

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**Version with markings to show changes made**

**In the specification:**

Please replace the paragraph beginning at page 2, line 28 with the following rewritten paragraph:

-- Referring to FIG. 1, a shoe 12 for protecting a foot includes an upper 13 having a quarter 16 and a vamp 18 attached together with stitching 20. Vamp 18 and quarter 16 may be constructed from a durable material, such as leather. An outsole 14 is attached to the upper 13 using conventional lasting techniques. Vamp 18 covers a front part of the foot, while quarter 16 covers a rear part of the foot. Vamp 18 has eyelets 22 for receiving conventional front lacing (not shown) and a tongue 24 for protecting the foot from the front lacing. Quarter 16 and vamp 18 together define an opening 27 [26] of the upper 13 for receiving the foot. --

Please replace the paragraph beginning at page 4, line 1 with the following rewritten paragraph:

-- Referring to FIG. 4, instep guard 40 is formed to include hollow channels 56, 58 that absorb shock to the feet without sacrificing comfort. In particular, instep guard 40 includes a first planar sheet 50 and a second planar sheet 52, with curved support members 54 extending between the planar sheets 50, 52 to define elongated hollow channels [air-filled channels] 56 with circular cross-sections. The channels extend through the instep guard 40, for example, along the axis 43 of the foot. Cross pieces 55 [56] join convex surfaces of adjacent curved members. Each cross piece 55 [56], defines an elongated hollow channels [air-filled channel] 58 with each planar sheet 50, 52 and the corresponding curved members 54 [56]. The hollow channels 58 each have a substantially trapezoidal cross-section. Thus the instep guard 40 defines parallel air-filled channels aligned along the axis 43 of the foot to provide protection from inadvertent blows or forces to the metatarsals of the foot without making the shoe uncomfortable. --

**In the claims:**

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Claims 11-23 have been cancelled.

Claims 1 and 4 have been amended as follows:

-- 1. (Amended) Footwear for protecting a foot comprising:

an upper defining an opening, the upper including:

a vamp having a proximal and a distal region;

an instep portion in the vamp to cover a metatarsal section of the foot, the instep portion including a liner positioned beneath the instep portion;

a steel toe positioned on a toe portion of the upper for protecting a toe region of the foot; and

an elastic instep guard positioned between the instep portion and the liner [on the instep portion] to protect the metatarsal section of the foot, the instep guard including an elastic support having a plurality of hollow passages [,] and extending from the distal region to the proximal region of the vamp which is attached to the toe portion of the steel toe; and

[a steel toe for protecting a toe region of the foot; and]

an outsole attached to the upper to define a cavity that receives the foot through the opening.

4. (Amended) The footwear of claim 1 wherein [at least some of] the plurality of [holes] hollow passages are defined by a [the] first sheet, a second sheet, and [the] a plurality of curved support members. --

In the abstract:

-- Footwear for protecting a wearer's foot includes an upper that defines an opening for receiving a wearer's foot and an outsole attached to the upper, the upper further including a vamp having a proximal and a distal region, an elastic instep guard positioned on an instep portion of the upper to protect a metatarsal region of the foot, the elastic instep guard extending from the distal region to the proximal region of the vamp which is attached to the toe portion of the steel toe. The instep guard has a plurality of hollow passages. --

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